MONTANA LEGISLATIVE HISTORY

Chapter 691 1991

Bill H 567 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2/15	C	Hearing Date(s)	3/20	C
	2/17	C		3/20	C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Governor's Amendment 4/04

HB 567 INTRODUCED BY FAGG, ET AL.
REVISE ATTORNEY GENERAL DUTIES
BY REQUEST OF DEPARTMENT OF JUSTICE

2/02	INTRODUCED		
2/02	REFERRED TO JUDICIARY		
2/04	FIRST READING		
2/04	FISCAL NOTE REQUESTED		
2/07	FISCAL NOTE RECEIVED		
2/08	FISCAL NOTE PRINTED		
2/15	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	PLACED ON CONSENT CALENDAR		
2/23	3RD READING PASSED	90	7
	TRANSMITTED TO SENATE		
2/25	FIRST READING		
2/25	REFERRED TO JUDICIARY		
3/20	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	48	0
3/25	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
4/01	SIGNED BY SPEAKER		
4/01	SIGNED BY PRESIDENT		
4/01	TRANSMITTED TO GOVERNOR		
4/04	RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS		
4/08	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	95	2
4/09	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	96	0
	TRANSMITTED TO SENATE		
4/17	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/18	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
	RETURNED TO HOUSE		
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/24	TRANSMITTED TO GOVERNOR FOR RECONSIDERATION		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 691	EFFECTIVE DATE: 4/27/91	

HB 568 INTRODUCED BY J. RICE
INCREASE FEES FOR REGULAR DRIVER'S LICENSE
AND COMMERCIAL LICENSE

2/02	INTRODUCED		
2/02	REFERRED TO APPROPRIATIONS		
2/04	FIRST READING		
2/04	FISCAL NOTE REQUESTED		
2/05	REREFERRED TO HIGHWAYS & TRANSPORTATION		
2/07	FISCAL NOTE RECEIVED		
2/08	FISCAL NOTE PRINTED		
3/07	HEARING		
3/11	TABLED IN COMMITTEE		
3/13	TAKEN FROM TABLE		
3/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/19	2ND READING PASSED	51	47
3/21	3RD READING PASSED	57	41
	TRANSMITTED TO SENATE		
3/22	FIRST READING		

HOUSE BILL NO. 567

INTRODUCED BY FAGG, MEASURE, COHEN, TOOLE,
DOHERTY, HAGER, HOFFMAN
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE HOUSE

FEBRUARY 2, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 4, 1991	FIRST READING.
FEBRUARY 19, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1991	PRINTING REPORT.
FEBRUARY 21, 1991	POSTED ON ALTERNATIVE CONSENT CALENDAR.
FEBRUARY 23, 1991	THIRD READING, PASSED. AYES, 90; NOES, 7.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 25, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 20, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 23, 1991	SECOND READING, CONCURRED IN.
MARCH 25, 1991	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 25, 1991	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
MARCH 28, 1991	REPORTED CORRECTLY ENROLLED.
APRIL 1, 1991	SIGNED BY PRESIDENT.

	SIGNED BY SPEAKER.
	DELIVERED TO GOVERNOR.
APRIL 4, 1991	RETURNED FROM GOVERNOR WITH RECOMMENDED AMENDMENTS.
APRIL 8, 1991	SECOND READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
APRIL 9, 1991	THIRD READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
	IN THE SENATE
APRIL 17, 1991	SECOND READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
APRIL 18, 1991	THIRD READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
	IN THE HOUSE
APRIL 19, 1991	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

CHAIRMAN--BILL STRIZICH
NORMAL SCHEDULE==> SITE: ROOM 312-2 DAYS: M,T,W,T,F TIME: 8:00 A.M.

SECRETARY-JEANNE DOMME

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0505	1/31	2/06		TABLED ON 02/15		
COBB, JOHN			ESTABLISHING BURDEN OF PROOF IN INTENTIONAL INTERFERENCE OF CONTRACTS			
HB0546	2/01	2/14		TABLED ON 02/14		
LARSON, DON			ALLOWING VICTIMS OF FELONY OFFENSES TO MAKE SENTENCING RECOMMENDATIONS			
HB0554	2/01	2/13		TABLED ON 02/13		
BENEDICT, STEVE			REVISE INDIGENT COURT FILING			
HB0555	2/01	2/15		DO PASS		2/19
HOFFMAN, DAVID			REVISE CRIMINAL PROOF AND PRESUMPTIONS			
HB0559	2/01	2/15		PASS AS AMENDED		2/21
FAGG, RUSSELL			GENERALLY REVISE & CLARIFY DUI LAWS			
HB0567	2/02	2/15		PASS AS AMENDED		2/19
FAGG, RUSSELL			REVISE ATTORNEY GENERAL DUTIES			
HB0581	2/04	2/18		DO PASS		2/19
STRIZICH, BILL			ALLOW ALL LAW ENFORCEMENT AGENCIES TO USE CERTAIN RECORDS OF YOUTHS			
HB0584	2/04	2/21		TABLED ON 02/22		
SOUTHWORTH, JIM			LIMIT DEFENSE ATTORNEY FEES IN WORKERS' COMPENSATION CASES			
HB0608	2/05	2/12		PASS AS AMENDED		2/16
WHALEN, TIM			GIVE PSC QUASI-JUDICIAL POWER INCREASE FINE FOR COMMON CARRIER TO $500 A DAY			
HB0610	2/05	2/11		PASS AS AMENDED		2/13
BRADLEY, DOROTHY			CLARIFY ALTERNATIVE REGULATION OF TELEPHONE LOCAL EXCHANGE COMPANIES			
HB0618	2/05	2/20		DO PASS		2/20
BERGSAGEL, ERNEST			REVISE CRIMINAL APPEAL TO DISTRICT COURT			

HOUSE BILL NO. 567

INTRODUCED BY Jay Stearns, Tom Doherty

BY REQUEST OF THE DEPARTMENT OF JUSTICE

Hager Hoff

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODERNIZE THE DUTIES OF THE ATTORNEY GENERAL; AMENDING SECTION 2-15-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-501, MCA, is amended to read:

"**2-15-501. General duties.** It is the duty of the attorney general:

(1) to ~~attend-the-supreme-court-and~~ prosecute or defend all causes in the supreme court in to which the state or any officer ~~thereof~~ of the state in his official capacity is a party or in which the state has an interest ~~and-all-causes-to-which-any-county-may-be-a-party-unless--the--interest--of-the--county--is-adverse-to-the-state-or-some-officer-thereof-acting-in-his-official-capacity~~;

(2) after judgment in any of the causes referred to in ~~the--preceding~~ subsection (1), to direct the issuing of ~~such~~ a process as may be necessary to carry the ~~same~~ process into execution;

~~(3)--to-account-for-and-pay-over-to-the--proper--officer-all--moneys--which-may-come-into-his-possession-belonging-to-the-state-or-to-any-county;~~

~~(4)~~(3) to keep a register of all cases ~~in-which--he--is-required-to-appear~~ prosecuted or defended by him, which must during business hours be open to the inspection of the public. ~~The-register-must-show--the--county,--district,--and-court--in-which-the-cases-have-been-instituted-and-tried-and-whether-they-are-civil-or-criminal.-If-civil,--the--register-must---show---the---nature--of--the--demand,--the--stage--of-proceedings,-and,-when-prosecuted-to-judgment,-a--memorandum-of--the-judgment,-of-any-process-issued-thereon,-and-whether-satisfied-or-not.-If-not-satisfied,-the-register--must--show-the--return--of--the-sheriff.-If-criminal,-the-register-must-show-the-nature-of-the-crime,-the-mode-of--prosecution,--the-stage--of--proceedings,--and,-when-prosecuted-to-sentence,-a-memorandum-of-the-sentence-and-of-the-execution-thereof,--if-the--same--has--been--executed,--and-if-not-executed,-of-the-reason-of-the-delay-or-prevention.~~ The attorney general must deliver the ~~same~~ register to his successor in office.

~~(5)~~(4) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their

INTRODUCED BILL
HB 567

office. The county attorney ~~must~~ shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

~~(6)~~(5) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of his duties or to prosecute or defend appropriate cases in which the state or any officer of the state in his official capacity is a party or in which the state has an interest;

~~(7)~~(6) to give his opinion in writing, without fee, to the legislature or either house ~~thereof~~ of the legislature, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. He shall give any such opinion within 3 months following the date it is requested unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's

opinion ~~shall be~~ is controlling unless overruled by a state district court or the supreme court.

~~(8) to bid upon and purchase in the name of the state and under the direction of the board of investments any property offered for sale under execution issued upon judgments in favor of or for the use of the state and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases;~~

~~(9) whenever the property of a judgment debtor in any judgment mentioned in the preceding subsection has been sold under a prior judgment or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of investments, to redeem such property from such prior judgment, lien, or encumbrance. All sums of money necessary for such redemption must be paid out of any money appropriated for such purposes.~~

~~(10) when in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must be paid out of any appropriations for the prosecution of delinquents;~~

~~(11)~~(7) to discharge the duties of a member of the board of examiners and state board of land commissioners ~~and other duties prescribed by law~~;

~~(12)~~(8) to prescribe the form of blanks to be used by the clerks of the district courts in issuing commitments to the several state institutions, admission to which requires a court commitment;

(9) to perform all other duties as required by law."

NEW SECTION. **Section 2.** **Effective date.** [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0567, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill would modernize the duties of the Attorney General.

ASSUMPTIONS:

1. The bill essentially updates and clarifies the general duties of the Attorney General without any material impact on expenditures of the Department of Justice or other state agencies.

FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

None.

2-7-91

ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Russell C. Fagg 2/8/91

RUSSELL FAGG, PRIMARY SPONSOR DATE

Fiscal Note for HB0567, as introduced

HB 567

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 15, 1991, at 7:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 505

Discussion: **Chairman Strizich** asked Greg Petesch to explain this bill to the committee and the bills relating to it.

Greg Petesch stated the Legislative Council, in 1980, adopted a rule that directed the staff to flag what the court found to be void or problems in the law or errors and problems people pointed out when discussing these things with staff that could be fixed

whether or not the person has a right of privacy. Our constitution clearly recognizes the right of privacy in an individual. The question here is whether the court would manufacture that as a right of privacy. The condition we are looking at here is the hazard which has caused or is likely to cause harm.

REP. RUSSELL asked **Mr. Monroe** if he would respond to blackmail settlements? **Mr. Monroe** said you have heard the opponents say that if you pass this bill litigants won't settle peacefully and you will clog the court system. Mr. Monroe thought that was humorous. What the opponents are saying is that if you have a hazard so bad that it hurts or kills somebody and we don't want anybody to know about it and we will pay alot of money to settle this case. But if you pass this bill saying we can't do this, then we will take it to a jury trial and let the entire press be aware of everything. I don't believe that, they will settle out of court.

Closing by Sponsor:

REP. WHALEN stated that virtually every state in the union has adopted this rule of civil procedure for their state almost identical to the federal rule. Three states have, 1 by court ruled, and 2 by statutory enactment, enacted this type of legislation. This is an unworkable piece of legislation. The issue has been raised as to whether or not the particular provision in the Montana Constitution dealing with the right to privacy might put this in direct conflict with that constitutional provision. I suggest to you that we are talking about products that are manufactured and distributed in interstate commerce including the public. There are absolutely no privacy problems except to the extent that the law might butt up against a federal trade mark or patent law. You need to understand that in this bill the release of information can take the form of an "in camera" inspection by a judge and that judge then makes the decision. It is a matter of saving lives and we would be foolish not to have this bill pass.

HEARING ON HB 567
REVISE ATTORNEY GENERAL DUTIES

Presentation and Opening Statement by Sponsor:

REP. FAGG, HOUSE DISTRICT 89, stated this bill is on request of the Attorney General and reflects what the Attorney General's office does. The language being stricken has been on the books for years and years and are things the Attorney General's office does not do at this time. The bill modernizes the current language. The AG's office has requested to strike the new section on page 5. This was done because, according to Judy Browning, the Attorney General's Office has never done this and

it is unnecessary.

Proponents' Testimony:

Judy Browning, Deputy of the Attorney General, stated she is representing the Department of Justice. The Department didn't have a problem with the statutes that set forth the responsibilities of the Attorney General except during last year the legislature audited the Attorney General's Office. Going through the statutes that set forth the duties, the auditor suggested that we clean up the language because some of these provisions have not been in operation for a long time. It was necessary to delete a lot of the excess language so we could reflect this back to the legislation.

The National Association of Attorney Generals have done a survey of all Attorney Generals and the legal provisions that set forth their responsibilities. The first page of the bill takes out line 17 through 19 which is now going to our states legal business department. On page 2 there is a lot of language taken out which is simply annotated language. On page 3 there is language that is cleaned up and on page 4 there are 3 sections taken out. There is some new language on the first page of the bill that says the Attorney General may bring cases in which the state has interest. That is a reflection of case law. I urge you to approve this bill and give it a do pass.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. FAGG stated this bill simply modernizes the duties of the Attorney General's office and I would appreciate your support.

HEARING ON HB 559
GENERALLY REVISE AND CLARIFY DUI LAWS

Presentation and Opening Statement by Sponsor:

REP. FAGG, HOUSE DISTRICT 89, stated he is sponsoring this bill at the request of the Department of Justice. This bill was drafted to address certain inconsistencies in the language of Montana DUI laws. It has received the responses of numerous criminal lawyers both from the prosecution and defense side. It will conform the DUI laws to changes which have been made in the law by the Montana Supreme Court. The most significant change in this law changes presumptions to inferences. This is required under State vs. Weber that came out this past year. Previously law said that if a persons BAC was over .1 it was presumed they

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 17, 1991, at 4:00 P.M.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Gould

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 555

Motion: **REP. STICKNEY MOVED HB 555 MOVED DO PASS.** Motion carried.

EXECUTIVE ACTION ON HB 567

Motion: **REP. JOHNSON MOVED HB 567 DO PASS.**

Motion/Vote: **REP. MEASURE** moved to amend HB 567 to strike out

4,5,6,7 on page 5 and all of subsection 8 and renumber subsection 9. Motion carried.

Motion/Vote: REP. JOHNSON MOVED HB 567 DO PASS AS AMENDED. Motion carried 19 to 1 with Rep. Brown voting no.

EXECUTIVE ACTION ON HB 421

Motion: REP. BROOKE MOVED HB 421 DO PASS.

Discussion: REP. MEASURE said this bill should have some legislation that addresses Justice of the Peace and City Courts.

Vote: Motion carried 18 to 2 with Rep's: Toole and Whalen voting no.

EXECUTIVE ACTION ON HB 559

Motion: REP. BROOKE MOVED HB 559 DO PASS.

Discussion: REP. MEASURE stated this bill addresses two areas. One is the area of change of presumption of the law for DUI to an inference. Presumption means you have to, as a defendant, overcome that presumption in order to overcome the state's case. That is already in the law and case law. Then the bill mentions airplanes and boats and some licensing while under the influence of drugs. Some of these drugs have residual effects that last for months. The second thing is you are forcing a person to do is take a blood test as opposed to the breathalizer. You are spending the county's money to do this and who knows what results you are going to get.

Motion: REP. MEASURE moved to amend HB 559 by totally deleting all the language having to do with drug testing in this bill. "So the bill only brings the DUI statues into compliance with what we presently have reviewed by the Supreme Court."

Discussion: REP. WHALEN stated he felt that the committee needs to realize the Supreme Court has already thrown the fifth amendment out the window when it comes to these types of statutes. With that in mind, he emphasized that the committee needs to keep this bill as narrow as possible.

REP. CLARK stated this would take away the ability of the state to determine if the person is actually under the influence of drugs.

REP. BROWN said that what the bill is trying to do is set up a new system for determining if someone is under the influence.

REP. CLARK said this amendment takes a tool away from the law enforcement to find out what drug they are on.

HOUSE STANDING COMMITTEE REPORT

February 18, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 567 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Page 5, lines 4 through 7.
Strike: subsection (8) in its entirety
Renumber: subsequent subsection

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.
SECRETARY-JOANN BIRD

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0555	2/25	3/07		CONCUR		3/07
HOFFMAN, DAVID			REVISE CRIMINAL PROOF AND PRESUMPTIONS			
HB0559	2/27	3/25		CONCUR AS AMENDED		4/04
FAGG, RUSSELL			GENERALLY REVISE & CLARIFY DUI LAWS			
HB0567	2/25	3/20		CONCUR		3/20
FAGG, RUSSELL			REVISE ATTORNEY GENERAL DUTIES			
HB0571	2/27	3/25		CONCUR		3/25
RICE, JIM			REVISION TO MOTOR VEHICLE HABITUAL OFFENDER STATUTES			
HB0572	2/27	3/25		CONCUR		3/25
RICE, JIM			GENERALLY REVISED COMMERCIAL OPERATOR DUI STATUES & OTHER OFFENSES			
HB0573	2/27	3/25		CONCUR		3/25
RICE, JIM			CLARIFY THE MOTOR VEHICLE CODE DEFINITION OF "CONVICTION"			
HB0581	2/25	3/13		CONCUR		3/16
STRIZICH, BILL			ALLOW ALL LAW ENFORCEMENT AGENCIES TO USE CERTAIN RECORDS OF YOUTHS			
HB0596	2/25	3/26		CONCUR		4/01
O'KEEFE, MARK			PROHIBIT HOUSING DISCRIMINATION ON MARITAL STATUS			
HB0604	2/27	3/26		TABLED ON 04/01		
BROWN, JAN			ALLOW ADULTS TO OBTAIN INFORMATION DISCLOSING BIRTH OUT OF WEDLOCK			
HB0608	2/25	3/20		TABLED ON 03/23		
WHALEN, TIM			GIVE PSC QUASI-JUDICIAL POWER INCREASE FINE FOR COMMON CARRIER TO $500 A DAY			
HB0618	2/27	3/22		CONCUR AS AMENDED		3/22
BERGSAGEL, ERNEST			REVISE CRIMINAL APPEAL TO DISTRICT COURT			

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 20, 1991, at 10:00 a.m.

ROLL CALL

Members Present:
Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 864

Presentation and Opening Statement by Sponsor:

Representative Bud Gould, District 61, said HB 864 was heard in State Administration and went out on the Consent Calendar. He told the Committee it is a simple bill to transfer the district court funding from the Department of Commerce to the Supreme Court. Representative Gould asked Senator Towe to carry HB 864.

Proponents' Testimony:

Newell Anderson, Administrator, Local Government Assistance Division, Department of Commerce, told the Committee he requested the bill. He said HB 864 is simple and straightforward, and that this is becoming more of a judicial policy program than a financial management program. Mr. Anderson explained that there would be no fiscal impact.

Closing by Bill Sponsor:

Representative Measure, thanked the Committee and urged that they pass HB 268.

EXECUTIVE ACTION ON HOUSE BILL 268

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe made a motion that the State Bar amendment be approved. The motion carried unanimously.

Recommendation and Vote:

Senator Towe made a motion that HB 268 BE CONCURRED IN AS AMENDED. The motion carried unanimously. Senator Halligan was asked to carry the bill.

HEARING ON HOUSE BILL 567

Presentation and Opening Statement by Sponsor:

Representative Russell Fagg, District 89, said HB 567 modernizes statutory language of the Office of the Attorney General. He said language on the books now does not address what the Attorney General does, and that the bill changes about 42 lines and adds about five lines, condensing the Code. Representative Fagg reported that the Democratic members of the House Judiciary Committee had not problem with the bill.

Proponents' Testimony:

Judy Browning, Deputy Attorney General, explained that an audit by the Legislative Auditor this past year, uncovered the need to clean up this language. She said section 1 deals with state interest, and that subsection (5) on page 3, lines 9-12, deals with probate cases in which the state has an interest. Mrs. Browning urged the Committee to pass HB 567.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Crippen asked if the changes in the bill would affect the Attorney General's ability to issue opinions. Representative Fagg replied it would not.

Closing by Sponsor:

Representative Fagg made no closing comments.

EXECUTIVE ACTION ON HOUSE BILL 567

Motion:

Senator Mazurek made a motion that HB 567 BE CONCURRED IN.

Discussion:

There was no discussion on the bill.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously. Senator Mazurek made a motion that HB 567 be put on the CONSENT CALENDAR. That motion carried unanimously. Senator Doherty was asked to carry the bill.

HEARING ON HOUSE BILL 608

Presentation and Opening Statement by Sponsor:

Representative Tim Whalen, District 93, said HB 608 deals with two issues. He stated Title 69 pertains to railroad regulations and imposition of fines for intentional violations of the law, and the second part, making it clear that the Public Service Commission (PSC) has quasi-judicial powers, was amended out of the bill because it presented too many problems.

Representative Whalen advised the Committee that the bill is left with the fine provisions from a minimum $500 fine to a maximum limit of $500 per day, and the requirement that these funds be directed to the complaining party or to the affected community.

Proponents' Testimony:

There were no proponents of the bill.

SENATE STANDING COMMITTEE REPORT

March 20, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 567 (third reading copy -- blue), respectfully report that House Bill No. 567 be concurred in.

Signed: _____
Richard Pinsoneault, Chairman

3-20-91
Amd. Coord.

3/20 1:35
Sec. of Senate

HOUSE BILL NO. 567

INTRODUCED BY FAGG, MEASURE, COHEN, TOOLE,

DOHERTY, HAGER, HOFFMAN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODERNIZE THE DUTIES OF THE ATTORNEY GENERAL; AMENDING SECTION 2-15-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-501, MCA, is amended to read:

"**2-15-501. General duties.** It is the duty of the attorney general:

(1) to ~~attend the supreme court and~~ prosecute or defend all causes in the supreme court in ~~to~~ which the state or any officer ~~thereof~~ of the state in his official capacity is a party or in which the state has an interest ~~and all causes to which any county may be a party unless the interest of the county is adverse to the state or some officer thereof acting in his official capacity~~;

(2) after judgment in any of the causes referred to in ~~the preceding~~ subsection (1), to direct the issuing of ~~such~~ a process as may be necessary to carry the ~~same~~ process into execution;

~~(3) to account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county;~~

(3) to keep a register of all cases ~~in which he is required to appear~~ prosecuted or defended by him, which must during business hours be open to the inspection of the public. ~~The register must show the county, district, and court in which the cases have been instituted and tried and whether they are civil or criminal. If civil, the register must show the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not. If not satisfied, the register must show the return of the sheriff. If criminal, the register must show the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention.~~ The attorney general must deliver the same register to his successor in office.

(4) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county

attorneys in all matters pertaining to the duties of their office. The county attorney must shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

~~(6)~~(5) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of his duties or to prosecute or defend appropriate cases in which the state or any officer of the state in his official capacity is a party or in which the state has an interest;

~~(7)~~(6) to give his opinion in writing, without fee, to the legislature or either house thereof of the legislature, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. He shall give any such opinion within 3 months following the date it is requested unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer,

board, commission, or department, the attorney general's opinion ~~shall be~~ is controlling unless overruled by a state district court or the supreme court.

~~(8) to bid upon and purchase in the name of the state and under the direction of the board of investments any property offered for sale under execution issued upon judgments in favor of or for the use of the state and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchase;~~

~~(9) whenever the property of a judgment debtor in any judgment mentioned in the preceding subsection has been sold under a prior judgment or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of investments to redeem such property from such prior judgment, lien, or encumbrance. All sums of money necessary for such redemption must be paid out of any money appropriated for such purposes;~~

~~(10) when in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must be paid out of any appropriations for the prosecution~~

~~of-delinquents;~~

~~(11)~~(7) to discharge the duties of a member of the board of examiners and state board of land commissioners ~~and other-duties-prescribed-by-law;~~

~~(12)~~(8) ~~--to--prescribe--the-form-of-blanks-to-be-used-by the-clerks-of-the-district-courts-in-issuing-commitments--to the--several-state-institutions,-admission-to-which-requires a-court-commitment;~~

~~(9)~~(8) to perform all other duties as required by law."

NEW SECTION. **Section 2.** **Effective date.** [This act] is effective on passage and approval.

-End-

GOVERNOR'S AMENDMENTS TO
HOUSE BILL 567
(REFERENCE COPY, AS AMENDED)
April 4, 1991

1. Page 1, line 23.
Following: "to carry the"
Strike: "process"
Insert: "judgment"

GOV. Amend
HB 567

HOUSE BILL NO. 567

INTRODUCED BY FAGG, MEASURE, COHEN, TOOLE,

DOHERTY, HAGER, HOFFMAN

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(2) after judgment in any of the causes referred to in ~~the preceding~~ subsection (1), to direct the issuing of ~~such~~ a process as may be necessary to carry the ~~same~~ process JUDGMENT into execution;

~~(3) to account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county;~~

~~(4)~~(3) to keep a register of all cases ~~in which he is required to appear~~ prosecuted or defended by him, which must during business hours be open to the inspection of the public. ~~The register must show the county, district, and court in which the cases have been instituted and tried and whether they are civil or criminal. If civil, the register must show the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not. If not satisfied, the register must show the return of the sheriff. If criminal, the register must show the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention.~~ The attorney general must deliver the ~~same~~ register to his successor in office.

~~(5)~~(4) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county

REFERENCE BILL: INCLUDES GOVERNOR'S AMENDMENTS DATED 4-4-91

attorneys in all matters pertaining to the duties of their office. The county attorney ~~must~~ shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

~~(6)~~(5) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of his duties or to prosecute or defend appropriate cases in which the state or any officer of the state in his official capacity is a party or in which the state has an interest;

~~(7)~~(6) to give his opinion in writing, without fee, to the legislature or either house ~~thereof~~ of the legislature, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. He shall give any such opinion within 3 months following the date it is requested unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer,

board, commission, or department, the attorney general's opinion ~~shall be~~ is controlling unless overruled by a state district court or the supreme court.

~~(8) to bid upon and purchase in the name of the state and under the direction of the board of investments any property offered for sale under execution issued upon judgments in favor of or for the use of the state and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases;~~

~~(9) whenever the property of a judgment debtor in any judgment mentioned in the preceding subsection has been sold under a prior judgment or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of investments, to redeem such property from such prior judgment, lien, or encumbrance. All sums of money necessary for such redemption must be paid out of any money appropriated for such purposes;~~

~~(10) when in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must be paid out of any appropriations for the prosecution~~

~~of delinquents;~~

~~(11)~~(7) to discharge the duties of a member of the board of examiners and state board of land commissioners ~~and other duties prescribed by law~~;

~~(12)~~(8) ~~to prescribe the form of blanks to be used by the clerks of the district courts in issuing commitments to the several state institutions, admission to which requires a court commitment~~;

~~(9)~~(8) to perform all other duties as required by law."

NEW SECTION. **Section 2.** **Effective date.** [This act] is effective on passage and approval.

-End-